No. 04-413

OCT 25 2004

In The

Supreme Court of the United States

THE CITY OF ALBUQUERQUE,
a municipal corporation, et al.,

Petitioners,

vs.

RICK HOMANS and SANDER RUE,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

RESPONDENT RICK HOMANS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the Tenth Circuit correctly strike down the campaign spending limit imposed on Albuquerque municipal elections on the grounds that all of the interests offered by the City in defense of the limit had been considered and rejected in *Buckley v. Valeo*, 424 U.S. 1 (1976) and that the City failed to present sufficient evidence to justify the spending limit?

2. Does a split between the Tenth and Second Circuits exist, where neither court has treated *Buckley* as an absolute prohibition against campaign spending limits?

3. Should this Court consider whether preserving the time of officeholders is a compelling state interest, where the campaign spending limit imposed by the City was not narrowly tailored to serve such an interest and the City presented almost no evidence of the amount of time City officeholders spent on campaign fundraising?

4. Should the Court overturn *Buckley*?

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
JURISDICTIONAL STATEMENT	1
RELEVANT AUTHORITY INVOLVED	1
STATEMENT OF THE CASE	1
A. Relevant Facts	1
B. Procedure	4
REASONS FOR DENYING THE PETITION	5
I. THE TENTH CIRCUIT CORRECTLY APPLIED THE *BUCKLEY* STRICT SCRUTINY STANDARD	6
II. THE CITY'S PETITION INCORRECTLY POSITS A SPLIT BETWEEN THE TENTH AND SECOND CIRCUITS CONCERNING WHETHER *BUCKLEY* ABSOLUTELY PROHIBITS CAMPAIGN SPENDING LIMITS	10
III. THE ALBUQUERQUE ORDINANCE, AND THE RECORD OFFERED IN ITS DEFENSE, PROVIDE A POOR SETTING FOR CONSIDERING WHETHER PROTECTING THE TIME OF OFFICEHOLDERS FROM THE BURDENS OF FUNDRAISING IS A COMPELLING STATE INTEREST	11
IV. THE COURT SHOULD NOT OVERTURN *BUCKLEY V. VALEO*	16
CONCLUSION	18

TABLE OF AUTHORITIES

Page

CASES:

Agostini v. Felton, 521 U.S. 203 (1997) 16

Air Courier Conf. of America v. American Postal Workers Union, AFL-CIO, 498 U.S. 517 (1991) 15

Board of Airport Comm'rs v. Jews for Jesus, Inc., 482 U.S. 569 (1987) 15

Buckley v. Valeo, 424 U.S. 1 (1976) ..... *passim*

Colorado Republican Fed. Campaign Comm. v. Fed. Election Comm'n, 518 U.S. 608 (1996) 13

Denver Area Educ. Telecomm's Consortium, Inc. v. FCC, 518 U.S. 727 (1996) 11

Dickerson v. United States, 530 U.S. 428 (2000) 17

Grutter v. Bollinger, 539 U.S. 306 (2003) 11

Homans v. City of Albuquerque, 264 F.3d 1240 (10th Cir. 2001) 4

Homans v. City of Albuquerque, 366 F.3d 900 (10th Cir. 2004) ..... *passim*

Hubbard v. United States, 514 U.S. 695 (1995) 16

Landell v. Sorell, 382 F.3d 91 (2d Cir. 2004) (petition for rehearing pending) ..... *passim*

McConnell v. Fed. Election Comm'n, 540 U.S. 93 S. Ct. 619 (2003) 17

Staub v. City of Baxley, 355 U.S. 313 (1958) 15

State Oil Co. v. Khan, 522 U.S. 3 (1997) 16

United States v. Castillo, 140 F.3d 874 (10th Cir. 1998) 9

TABLE OF AUTHORITIES – Continued

Page

United States v. IBM, 517 U.S. 843 (1996) 17

United States v. Salerno, 481 U.S. 739 (1987) 9

United States v. Virginia, 518 U.S. 515 (1996) 14

JURISDICTIONAL STATEMENT

Mr. Homans concurs with the Statement of Jurisdiction set out in the Petition of the City of Albuquerque (the "City"). *Pet.* at 1.

RELEVANT AUTHORITY INVOLVED

Mr. Homans concurs with the City's recitation of Constitutional Provisions and Statutes Involved, *Pet.* at 1, except that it omits the portion of the First Amendment protecting the associational rights invoked by Mr. Homans. ("Congress shall make no law . . . abridging . . . the right of the people to assemble. . . . ").

STATEMENT OF THE CASE

A. Relevant Facts

The City enacted Article XIII, Section 4(d) in 1974 as part of a comprehensive restructuring of City government. The restructuring entailed adoption of a new City charter, creating a home rule government and replacing the commissioner-manager system with a council-mayor structure. *Rue App.* at 744-45. Albuquerque voters thus approved the campaign spending and contribution limits as part of a broad reorganization of Albuquerque's City government, not as a single item referendum. *App.* at 3.

The City's Campaign spending limit was twice the mayor's salary, or $174,720, at the time of the 2001 City election. *App.* at 3, 4. Violation of the spending limit exposes a candidate to fires, removal from office, and public reprimand. *App.* at 4.

As part of his mayoral campaign effort, Mr. Homans launched a campaign of "Great Ideas for Albuquerque." *Homans App.* at 298. The Homans campaign included such proposals as eliminating the gross receipts tax on medical services to encourage healthcare providers to remain in the City; restoration of the endangered Bosque area adjacent to the Rio Grande; and a "311" telephone line to provide citizens with assistance in dealing with City departments and agencies, among other ideas. *Id.* at 298-99. In addition, Homans procured office space and hired campaign workers to assist in his campaign for mayor. *Id.* at 299. Homans' campaign for mayor was his first attempt at elected public office. *Id.* at 298. Homans' initial polling indicated that only two percent (2%) of city registered voters considered voting for him as mayor. *Id.*

In order to run a successful political campaign that allows a candidate to get his or her message out to the over 220,000 registered voters in the City, a candidate needs to maintain a sustained frequency rating for his or her campaign message with the voters. *Id.* at 302. A frequency rating is the repeated exposure of the candidate's message to the electorate. *Id.* An effective media campaign with a sufficient frequency rating to reach a substantial number of registered voters in the City requires an integrated approach to advertising that necessarily involves the use of such media as television, radio, billboards, print, internet and other media. *Id.*

The cost for a single, one-page newspaper advertisement in a city newspaper of general circulation is between $5,000 and $9,000. *Id.* The cost for a full-color advertisement can be even more. *Id.* A single billboard advertisement along one of the two interstate highways running through the City costs between $2,500 and $5,000 per

month, depending on the location and the size of the billboard. *Id.* A single direct mailing to the over 220,000 voters in the City costs between $50,000 and $80,000 for the mailer and postage. *Id.* at 303. An average quality political television commercial costs between $2,500 to $10,000 for production of the commercial alone. *Id.* Airing a commercial for a thirty-second spot during a news broadcast on a local city television station costs between $1,000 and $1,500 per showing. *Id.* An effective television campaign designed to reach the more than 220,000 registered voters in the City would need to run at least twelve (12) continuous weeks in order to maintain an adequate frequency rating with voters. *Id.* An effective television campaign costs between $40,000 to $50,000 per week. *Id.* The cost of a television campaign alone can run between $480,000 to $600,000. *Id.* The cost of this media exposure can easily exceed the $174,720 spending limit imposed by the City Charter. *Id.*

Significantly, the suspension of the campaign spending limits appeared to have no harmful effect on the 2001 mayoral election in Albuquerque, as measured by the yardsticks the City's experts employed. The City's experts pointed to Albuquerque's zero percent (0%) incumbency success rate as evidence that spending limits have improved Albuquerque's elections. *Id.* at 317. In the 2001 election, the incumbent mayor, Jim Baca, finished fourth in a field of eight candidates. *App.* at 54.

The City also argued that the absence of spending limits decreases voter turnout. The turnout for the October 2, 2001 election, however, was over 42% of registered voters. *Homans App.* at 55, 61. The average turnout for the period between 1989 and 1999 was about 35%. *Id.* A

significant increase in voter turnout thus accompanied suspension of campaign spending limits.

The City's experts also incorrectly predicted a large spending gap between incumbents and challengers. *Homans App.* at 322-324. In the 2001 election, two challengers (Mr. Chavez and Mr. Homans) raised and spent more money than the incumbent. *App.* at 55.

Mr. Homans, the biggest spender in the 2001 election, finished fifth in the mayoral race. *Id.* at 54. Mr. Schwartz did not exceed the spending limit and finished second. *Id.* at 54, 56. These simple, hard facts belie the City's anecdotes and suppositions about the effects of spending limits on electoral health in Albuquerque.

B. Procedure

Mr. Homans challenged the City's campaign spending limit in an action filed on August 1, 2001. *App.* at 4. Mr. Homans sought and obtained a temporary restraining order against enforcement of the limit. *Id.* The trial court later denied Mr. Homan's motion for a preliminary injunction, but on September 6, 2001, the Court of Appeals for the Tenth Circuit granted an injunction against the enforcement of the limit pending review of the case on the merits. *App.* at 4; *Homans v. City of Albuquerque*, 264 F.3d 1240, 1245 (10th Cir. 2001) (*per curiam*).

The district court granted Mr. Homans a permanent injunction and declaratory relief on February 13, 2002. *App.* at 4. The City appealed and the Tenth Circuit affirmed in *Homans v. City of Albuquerque*, 366 F.3d 900 (10th Cir. 2004). The City unsuccessfully sought rehearing

or rehearing *en banc*. *App.* 68-69. The City petitioned this Court for a writ of certiorari on September 22, 2004.

REASONS FOR DENYING THE PETITION

The *Homans* court correctly rejected the City's justifications for the campaign spending limit because this Court considered and rejected them all (prevention of corruption or the appearance of corruption, protection of officeholder time from the burdens of fundraising, and promotion of electoral competition) 28 years ago in *Buckley v. Valeo*, 424 U.S. 1 (1976). The *Homans* court wisely declined the City's invitation to retread the interests considered in *Buckley*. In any event, all of the members of the *Homans* panel agreed that the City had failed to present evidence sufficient to sustain the spending limits under any of the justifications it advanced.

The City seeks review principally on the argument that a conflict between the Tenth and Second Circuits has arisen concerning whether *Buckley* operates as a *per se* constitutional bar to campaign spending limits. The premise underlying this argument, however, is mistaken. The *Homans* opinion repeatedly recognizes that, contrary to Mr. Homans' argument, *Buckley* was not a *per se* prohibition against campaign spending limits. The Tenth and Second Circuits agree on this point. The City's attempt to portray a split rests on a mischaracterization of the opinion below.

The Tenth and Second Circuits do differ in their views about whether protecting the time of officeholders is a compelling state interest justifying campaign spending limits. The *Homans* case offers a poor occasion for addressing this difference, however, because the City's spending

limit imposes the same restriction on incumbents and challengers and because the *Homans* record contains virtually no evidence showing how much time City officials spend raising campaign funds. The City's spending limit suffers from obvious "tailoring" defects because it does not differentiate between incumbents and challengers, or even between contributed money and a candidate's own resources.

Finally, the City has suggested no good reason for overturning *Buckley*, particularly on the record presented in defense of the City's spending limits. Principles of *stare decisis* weigh heavily against abandoning the wise balance struck in *Buckley*.

I. THE TENTH CIRCUIT CORRECTLY APPLIED THE *BUCKLEY* STRICT SCRUTINY STANDARD.

The *Homans* opinion represents a reasoned application of the strict scrutiny standard required by *Buckley*. Judge Tymkovich's opinion, joined by Judge O'Brien (the "majority opinion"), recognized that *Buckley* had already rejected the prevention of corruption as a compelling interest justifying campaign spending limits. *App.* at 32-34. The majority opinion also rejected the two "new" interests offered by the City – the state's interest in relieving officerholders from the burdens of fundraising and the promotion of electoral competition. The *Buckley* Court rejected these interests, or broader interests subsuming them.

First, the majority opinion concluded, unremarkably, that since the federal government's interest in preventing corruption did not warrant the spending limits rejected in *Buckley*, the City's spending limit could not be defended on

an anti-corruption rationale. *App.* at 32-34. "There is no basis to retreat from *Buckley's* essential teaching that campaign spending restrictions are not narrowly tailored to further the governmental interest in reducing corruption." *App.* at 34. Significantly, the majority opinion's analysis of the City's anti-corruption argument begins by acknowledging that strict scrutiny, while setting a high standard, "does not establish a '*per se*' restriction on campaign spending schemes. . . . " *App.* at 32.

Next, the majority opinion concluded that the City's purported interest in protecting officeholders (or candidates) from the strain of fundraising was subsumed within a broader interest rejected in *Buckley*, the "cost-control" rationale. *App.* at 34-37. The rejection of a broad cost-control justification for the spending limits addressed in *Buckley* made addressing each of the subordinate arguments put forth in that case unnecessary. *App.* at 36. In any event, the *Buckley* record contradicts the City's characterization of the interest in preventing officeholders or candidates from diverting time and energy to fundraising as "new." *App.* at 36. *See also Landell v. Sorell*, 382 F.3d 91, 188-189 (2d Cir. 2004) (Winter, J., dissenting) (petition for rehearing *en banc* pending) (demonstrating that the court of appeals and the Supreme Court in *Buckley* considered arguments based on the interest of protecting candidate and officeholder time).

The majority opinion also correctly determined that the *Buckley* Court considered and rejected the argument that spending limits are necessary to promote electoral competition. *App.* at 39-41. The City argued that "campaign spending poses a threat to [electoral] competition because large incumbent war chests tend to discourage serious challengers." *App.* at 39. The majority opinion,

however, recognized that the *Buckley* Court had discarded this rationale in concluding that "equalization of permissible campaign expenditures might serve not to equalize the opportunities of all candidates but to handicap a candidate who lacked substantial name recognition or exposure of his views before the start of the campaign." *App.* at 40 (quoting *Buckley*, 424 U.S. at 56-57).

The real substance of the majority opinion in *Homans* was the recognition that the interests proferred by the City were identical to, or subsumed within, the interests addressed and rejected in *Buckley*. The majority opinion thus cautioned against efforts, like the City's arguments, to repackage rationales the *Buckley* court had already judged to be insufficient to support campaign spending limits. *See App.* at 29 (noting that "we should be careful not to credit attempts to reformulate arguments that the Supreme Court rejected long ago."); 35 (stating that Judge Lucero's approach could encourage additional attempts by governments to limit political speech by artfully restating the governmental interests rejected in *Buckley*). The majority opinion differed from Judge Lucero's analysis in concluding that *Buckley* itself precludes recognition of the reformulated interests urged by the City. *App.* at 41. Judge Lucero concluded, on the other hand, that *Buckley* did not foreclose consideration of the record the City presented, but that the City's evidence failed to show that the spending limit was necessary to further a compelling state interest. Like the majority opinion, Judge Lucero's analysis expressly acknowledged that *Buckley's* strict scrutiny standard does not create a *per se* prohibition against spending limits. *App.* at 11-12. Thus, none of the three judges on the *Homans* panel regarded *Buckley* as an

absolute or *per se* condemnation of spending caps for political campaigns.[1]

The majority opinion affirmed on the legal ground that the City had not offered any justification for its spending limit not already considered and rejected by the *Buckley* court. Judge Lucero concluded that *Buckley* did not foreclose consideration of the interests urged by the City, but that the evidence the City presented failed to satisfy the strict scrutiny standard imposed by *Buckley*. The majority opinion agreed with Judge Lucero's assessment of the deficiencies in the City's factual showing, but determined that consideration of the facts was unnecessary, in light of the failure of the City to identify interests different from those addressed in *Buckley*. In sum, the *Homans* opinion arrived at the correct conclusion because the City's defense of its spending limit was factually and legally inadequate.

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[1] Mr. Homans argued that the *Buckley* opinion created such a ban because the *Buckley* court affirmed a successful facial attack on the spending limits imposed by the 1974 amendments to the Federal Electric Campaign Act. By definition, a facial challenge requires the challenger to establish that "*no set of circumstances exists* under which the [a]ct would be valid." *United States v. Castillo*, 140 F.3d 874, 879, n.3 (10th Cir. 1998) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)) (emphasis in original). The *Homans* court, however, did not adopt this reasoning.

II. THE CITY'S PETITION INCORRECTLY POSITS A SPLIT BETWEEN THE TENTH AND SECOND CIRCUITS CONCERNING WHETHER *BUCKLEY* ABSOLUTELY PROHIBITS CAMPAIGN LIMITS.

The City's principal argument for reviewing the *Homans* opinion rests on the false premise that the Tenth Circuit applied *Buckley* as if it created a *per se* barrier to campaign spending limits. *Pet.* at 7 ("Judge Tymkovich's opinion . . . viewed *Buckley* as an absolute bar to spending limits regardless of the factual circumstances and legal interests supporting the limits."); at 11 ("The Tenth Circuit's ruling . . . views *Buckley* as forever foreclosing the constitutionality of [expenditure] limits, improperly treating First Amendment strict scrutiny as an automatic death knell for expenditure limits.") The City contrasts this purportedly categorical interpretation with the Second Circuit's reading of *Buckley* in *Landell v. Sorrell*, 382 F.3d 91 (2d Cir. 2004) (petition for rehearing pending). *Pet.* at 11, 12, 13, 14, 16. The City contends that the Tenth and Second Circuits have thus disagreed on whether *Buckley* forecloses the possibility that spending limits could be justified by compelling governmental interests. *Pet.* at 2, 12.

As demonstrated above, the City's characterization of the *Homans* opinion is inaccurate. The majority opinion and Judge Lucero's opinion stressed repeatedly that *Buckley* could not be viewed as an absolute prohibition against spending limits. *See, e.g., App.* at 11 (Judge Lucero disagreeing with appellees' contention that *Buckley* imposes a *per se* ban on all candidate expenditure restrictions); at 29 (majority opinion agreeing that strict scrutiny does not require automatic invalidation of governmental regulations), at 30 (majority opinion agreeing "that the

Buckley Court did not adopt a *per se* rule against campaign spending limits."). Indeed, Judge Lucero's opinion and the majority opinion cited *Grutter v. Bollinger*, 539 U.S. 306 (2003), in support of the same proposition urged by the City: that strict scrutiny is not "strict in theory, but fatal in fact." *Compare App.* at 11, 29 *with Pet.* at 16 ("strict scrutiny is still *scrutiny*, not a 'straightjacket that disables Government from responding to serious problems.'") (quoting *Denver Area Educ. Telecomm's Consortium, Inc. v. FCC*, 518 U.S. 727, 741 (1996)). The *Landell* opinion also makes precisely this point, using precisely the language quoted in the *Homans* opinion. *See Landell*, 382 F.3d at 112 ("Indeed, the Supreme Court has been clear in its rejection of the view that strict scrutiny is strict in theory, but fatal in fact.") (internal quotations and authorities omitted).

The City's portrayal of a split between the Second and Tenth Circuits thus arises from a mischaracterization of the *Homans* ruling. The majority opinion and Judge Lucero's opinion expressly disavowed the *per se* reading of *Buckley* incorrectly attributed to them by the City. The majority opinion instead concluded, correctly, that the City had offered no justifications for its campaign spending limit not already passed upon in *Buckley*.

III. THE ALBUQUERQUE ORDINANCE, AND THE RECORD OFFERED IN ITS DEFENSE, PROVIDE A POOR SETTING FOR CONSIDERING WHETHER PROTECTING THE TIME OF OFFICEHOLDERS FROM THE BURDENS OF FUNDRAISING IS A COMPELLING STATE INTEREST.

The *Homans* and *Landell* opinions do differ in their assessment of whether preserving officeholders' time from

the burdens of fundraising is a compelling state interest which might justify spending limits. The majority opinion in *Homans* concluded that this interest had been addressed and rejected in *Buckley*. *App.* at 34-39. Judge Lucero concluded that, although the *Buckley* Court had not weighed preservation of officeholder time as a possible reason for spending limits, the evidence the City had submitted was not sufficient to show that spending limits are necessary to further this interest. *App.* at 23.

Obversely, the majority in *Landell* held that the record in that case demonstrated that Vermont's interest in protecting the time of candidates and elected officials from fundraising could justify spending limits. *Landell*, 382 F.3d at 124-125. Judge Winter, dissenting, recounted at length the record from *Buckley* confirming that the interest in reducing the burdens of fundraising on officeholders was squarely presented to and considered by the Court of Appeals and the Supreme Court in *Buckley*. 382 F.3d at 188 nn.24-27. This is the only significant difference between the legal holdings of the Second and Tenth Circuits.

The *Homans* case, however, offers a poor setting for weighing (or reweighing) the sufficiency of the government's interest in preserving the time of officeholders. First, the City's campaign spending limit makes no distinction between officeholders seeking reelection and challengers. It imposes the same limit on both kinds of mayoral candidates. In doing so, it disregards the significant differences between the state's interest in protecting the time of an elected official, an officer of the state, and in protecting the time of challengers. Judge Lucero's opinion, for example, emphasized the difference between the City's interest in protecting officeholders, as opposed

to challengers, from the burden of fundraising. *App.* at 22 ("the woes of poor challengers aside, such campaigns distract *officeholders* from performing their official duties.") (emphasis in original). The majority opinion agreed that the "woes of under-funded challengers and the distractions of officeholders are not the same," but concluded that "[b]oth concerns are, however, aspects of the broader interest in controlling the costs of campaigns, an issue the *Buckley* Court did consider and firmly reject." *App.* at 35.

The statute at issue in *Landell*, Act 64, permitted incumbents to spend only 85% (or 90%, in the case of incumbent candidates for the General Assembly) of the limit imposed on challengers. 382 F.3d at 99. This differential serves to neutralize the advantages incumbents often enjoy from free media exposure. *Id.* at 128. It also corresponds with the state's more significant interest in protecting the time of its officers.

In contrast, the spending limit at issue in *Homans* imposes the same spending restrictions on incumbents and challengers. It thus improperly fails to account for the differences between the state's interest in preserving officeholder time and in preserving a challenger's time. It instead imposes the same burden to accomplish very different interests.

The City's spending limit also fails to differentiate between contributed monies and the candidate's own resources. "The central holding in *Buckley* is that spending money on one's own speech must be permitted[.]" *App.* at 31 (quoting *Colorado Republican Fed. Campaign Comm. v. Fed. Election Comm'n*, 518 U.S. 604, 627 (1996) (Kennedy, J., concurring in part and dissenting in part)). The state's interest in a spending limit obviously varies depending

upon whether a candidate uses contributed funds or his own funds, and an officeholder whose own funds permit him to finance a reelection campaign independently would be free from the burdens of fundraising. This Court has routinely struck down limitations on independent expenditures by candidates. *App.* at 31. The spending limit therefore cannot be fairly characterized as "narrowly tailored" to serve either an anti-corruption or preservation of time interest. These "tailoring" defects detract significantly from the defensibility of the spending limit.

The clear "tailoring" deficiencies in the City's campaign spending limit provide case-specific, narrow grounds for affirming the rulings of the Tenth Circuit and the trial court in this case. Apart from whether *Buckley* is a *per se* ban against campaign spending limits, whether protection of officeholder time is a compelling state interest, or whether *Buckley* should be overruled, the City's campaign spending limit is plainly an exercise in overkill. It overshoots anti-corruption interests by imposing the same spending limit on contributed funds as it imposes on a candidates' own money. It over-protects any interest in preserving the time of officeholder by imposing the same limit on challengers and incumbents. In light of the pre-*Buckely* origins of the City's campaign spending limit, satisfaction of the "narrow tailoring" requirement imposed by *Buckley* would have been a lucky guess. The City's legal and factual justifications for the campaign spending limit, and its scope, are necessarily *post hoc*. *See, e.g., United States v. Virginia,* 518 U.S. 515, 533 (1996) ("The justification must be genuine, not hypothesized or invented *post hoc* in response to litigation.").

In circumstances such as these, consideration of the tailoring problems in the City's spending limit would

wisely avoid the broader constitutional issues this case presents. *See, e.g., Board of Airport Comm'rs v. Jews for Jesus, Inc.*, 482 U.S. 569, 573-574 (1987) (holding that overbreadth of a resolution banning "First Amendment activities" at Los Angeles International Airport obviated a decision about whether the airport was a public forum). Principles of judicial restraint favor resolution of constitutional issues on the narrowest possible grounds. *See, e.g., Air Courier Conf. of America v. American Postal Workers Union, AFL-CIO*, 498 U.S. 517, 531 (1991) (Stevens, J., concurring). "The Court has long insisted . . . on keeping constitutional adjudication, when unavoidable, as narrow as circumstances will permit." *Staub v. City of Baxley*, 355 U.S. 313, 330 (1958) (Frankfurter, J., dissenting). Regardless whether the City has compelling interests in preventing corruption or in preserving officeholder time, the City's spending limit is too broad to pass the "narrowly tailored" test.

Furthermore, the record in this case contains scant evidence relating to the City's proferred interest in preserving the time of officeholders. The City cites the testimony of only two City officeholders, former Mayor Jim Baca and former Council Member Dede Feldman. *Pet.* at 22. Former Mayor Baca recounted his experience of being "forced to spend three hours every day making fundraising phone calls." *Pet.* at 22. Former Mayor Baca does not disclose, however, whether he spent three hours per day fundraising for a period of several weeks, for months, or for only a few days. Ms. Feldman's testimony is even less helpful. She merely pointed out that, as a state senator not subject to spending limits, she "spent a lot more time fundraising" than she did as a City Council candidate. *Pet.* at 22.

The magnitude of the City's interest in protecting the time of officeholders necessarily bears some relation to what the evidence shows about the time City officeholders spend on fundraising. Yet, the City failed to provide such evidence.

The breadth of the City's spending limit and the factual record offered in support of it thus make this case an inadequate laboratory for testing the City's interest in protecting the time of officeholders from fundraising. In contrast, the record submitted in *Landell* in support of Act 64 appears to offer a much more suitable environment for such a test. *See Landell*, 382 F.3d at 121-124 (describing some of the "powerful evidence" of time pressures imposed by fundraising on candidates, including officeholders). The *Homans* opinion is not the right case for undertaking an analysis of the purportedly "new" state interest in protecting the time of officeholders, even assuming such an interest is truly new.

IV. THE COURT SHOULD NOT OVERTURN *BUCKLEY V. VALEO.*

The doctrine of *stare decisis* protects the legitimate expectation of a society living under the law. *Hubbard v. United States*, 514 U.S. 695, 716 (1995) (Scalia, J., concurring). The doctrine reflects "a policy judgment that in most matters it is more important that the applicable rule of law be settled than that it be settled right." *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) (quoting *Agostini v. Felton*, 521 U.S. 203, 235 (1997)) (internal quotation marks omitted). Even in constitutional cases, the doctrine is so influential that this Court has always required a departure from precedent to be supported by some special

justification. *Dickerson v. United States*, 530 U.S. 428, 443 (2000); *United States v. IBM*, 517 U.S. 843, 856 (1996).

The City offers no special justification for disregarding *stare decisis* and discarding *Buckley*. The *Buckley* approach has proven adaptable and flexible by permitting governments to impose contribution limits, disclosure requirements, and other measures promoting electoral health, while respecting the rights of political candidates to spend the money required to express their political views. As the *Homans* court noted "*Buckley*'s strong affirmation of the free speech rights associated with campaign spending has remained essentially untouched for nearly thirty years." *App.* at 29 (citing *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 124 S. Ct. 619, 655 (2003)). The central holding in *Buckley* on campaign spending limits has "stood the test of time, both from judicial tinkering and legislative onslaught." *Id.* The City cannot fault the wise constitutional balance struck in *Buckley* between the freedoms essential to the proper operation of our political system and the state's interest in preventing corruption, or its appearance, in the election process.

CONCLUSION

The Court should deny the City's petition.

Respectfully submitted,

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